

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KENNETH L. FAULKNER,

Petitioner,

v.

M. POLLARD,

Respondent.

No. 1:20-cv-01748-JLT-HBK (HC)

ORDER DENYING PETITIONER'S MOTION  
FOR RECONSIDERATION

(Doc. 23)

Kenneth L. Faulkner is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On October 14, 2021, the previous assigned district judge issued an order adopting the assigned magistrate judge's findings and recommendations to dismiss the petition for writ of habeas corpus as an unauthorized successive petition. (Doc. 21.) On October 28, 2021, petitioner filed a motion to reopen the case. (Doc. 23.) The Court construes the motion to reopen the case as a motion for reconsideration filed pursuant to Rule 59(e) of the Federal Rules of Civil Procedure.

District courts "possess[] the inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient." *City of Los Angeles. v. Santa Monica Baykeeper*, 254 F. 3d 882, 885 (9th Cir. 2001) (citations and internal quotation marks omitted). A motion for reconsideration under Rule 59(e), however, "should not be granted . . . unless the district court is presented with newly discovered evidence, committed clear error, or if there is an

1 intervening change in the controlling law.” 389 *Orange St. Partners v. Arnold*, 179 F. 3d 656,  
 2 665 (9th Cir. 1999) (citing *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F. 3d 1255, 1263 (9th Cir. 1993)).  
 3 Reconsideration of a prior order is an extraordinary remedy “to be used sparingly in the interests  
 4 of finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.  
 5 3d 877, 890 (9th Cir. 2000) (citation omitted); *Pyramid Lake Paiute Tribe of Indians v. Hodel*,  
 6 882 F. 2d 364 n.5 (9th Cir. 1989) (“[T]he orderly administration of lengthy and complex litigation  
 7 such as this requires the finality of orders be reasonably certain.”).

8 Further, motions for reconsideration “may *not* be used to raise arguments or present  
 9 evidence for the first time when they could reasonably have been raised earlier in the litigation.”  
 10 *Kona Enters.*, 229 F.3d at 890 (emphasis in original) (citing 389 *Orange St. Partners*, 179 F.3d at  
 11 665); accord *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th  
 12 Cir. 2009). Local Rule 230(j) requires, in relevant part, that in moving for reconsideration of an  
 13 order denying or granting a prior motion, a party must show “what new or different facts or  
 14 circumstances are claimed to exist which did not exist or were not shown” previously, “what  
 15 other grounds exist for the motion,” and “why the facts or circumstances were not shown” at the  
 16 time the substance of the order which is objected to was considered.

17 Petitioner asks the Court to reopen his case to consider the “new and pertinent” issues of  
 18 ineffective assistance of counsel due to lack of pretrial investigation. (Doc. 23.) However,  
 19 petitioner’s motion acknowledges that this argument was already raised in petitioner’s objections  
 20 to the findings and recommendations, which the Court reviewed and considered when it  
 21 conducted a *de novo* review of the case. (See Doc. 16 at 30-31.) Mere disagreement with the  
 22 Court’s prior ruling provides no basis to grant a motion to amend or alter the judgment. See  
 23 *Kilgore v. Colvin*, No. 2:12-CV-1792-CKD, 2013 WL 5425313, at \*1 (E.D. Cal. Sept. 27, 2013)  
 24 (“Whatever may be the purpose of Rule 59(e) it should not be supposed that it is intended to give  
 25 an unhappy litigant one additional chance to sway the judge.”); see also *United States v.*  
 26 *Westlands Water Dist.*, 134 F. Supp. 2d 1111, 1131 (E.D. Cal. 2011) (“To succeed [on a Rule  
 27 59(e) motion], a party must set forth facts or law of a strongly convincing nature to induce the  
 28 court to reverse its prior decision.”). Petitioner has set forth no facts or law that would induce the

1 Court to reconsider its prior decision.

2 Because petitioner has not demonstrated that the Court's prior order was erroneous in any  
3 respect, the Court finds no basis to grant the requested relief. Petitioner's motion for  
4 reconsideration (Doc. 23) is therefore denied.

5  
6 IT IS SO ORDERED.

7 Dated: **February 15, 2022**

  
UNITED STATES DISTRICT JUDGE